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May 17, 2002

## VIA HAND DELIVERY

Mr. K. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

**Re: Rulemaking Amendments of Regulations for Telephone Service Providers  
TRA Docket No. 00-00873**

Dear Mr. Waddell:

Enclosed please find the original and 13 copies of the Brief of Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Inc., and Tennessee Telephone Company on Proposed Rules Filed by TRA Staff on May 2, 2002 for filing in the above-referenced docket. Also enclosed is an additional copy of the Brief, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions with respect to this filing, please do not hesitate to contact me.

Very truly yours,



R. Dale Grimes

RDG/gci

Enclosures

cc: Certificate of Service List  
Mr. Bruce H. Mottern

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE:

RULEMAKING AMENDMENTS OF  
REGULATIONS FOR TELEPHONE  
SERVICE PROVIDERS

02 MAY 17 AM 11 20  
Docket No. 00-00873  
OFFICE OF THE  
EXECUTIVE SECRETARY

**BRIEF OF CONCORD TELEPHONE EXCHANGE, INC.,  
HUMPHREYS COUNTY TELEPHONE COMPANY, TELlico TELEPHONE  
COMPANY, INC., AND TENNESSEE TELEPHONE COMPANY ON  
PROPOSED RULES FILED BY TRA STAFF ON MAY 2, 2002**

**INTRODUCTION**

Pursuant to the Notice of Filing issued by the TRA on May 9, 2002, Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Inc., and Tennessee Telephone Company (collectively, "TDS"), respectfully submit their brief in this matter with respect to "the most recent revisions to the proposed rules contained in the draft of those rules publicly distributed on May 2, 2002." In so doing, TDS adheres to its previous comments ("TDS October 26, 2001 Comments") and to the Industry Comments, both filed October 26, 2001, to the extent any such comments have not been rendered moot by changes incorporated by the TRA in the May 2, 2002 draft. TDS also generally joins in the brief that will be filed simultaneously by BellSouth on May 17, 2002.

Specifically, TDS reiterates and incorporates herein by reference the general discussion of the proposed rules contained in the TDS October 26, 2001 Comments at pages 1-4. Those comments noted how the actual operation of the proposed rules diverges from their stated purpose as set forth in § 1220-4-2-.02. While the purpose is to provide (1) minimum service standards, (2) for all service providers, (3) in balance with the state's policy of pro-competition

in the telecommunications sector, the proposed rules accomplish none of these goals. They set aspirational standards, sometimes approaching the level of perfection, that seek to micromanage the operations and financial management of the companies in ways that have little to do with technological advances in the industry. Yet these requirements do not apply to all telecommunications providers; instead the most significant and onerous provisions, such as §§ 1220-4-2-.15, -.16, and -.17, apply selectively and discriminatorily only to eligible telecommunications providers ("ETCs"), apparently because such carriers will be eligible to receive state universal service support, see §§ 1220-4-2-.01(5) (definition of ETC), -.17(2)(c) (referencing withholding state universal service support for violation of rule), even though such support is not in place or even contemplated to exist in the near future. Moreover, the rules fail to strike an appropriate balance with a policy of pro-competition, because it imposes heavy and costly regulatory requirements on the ETCs, which most likely will be incumbent carriers like TDS, while sparing CLECs from the duty to shoulder the same burdens; this places the ETCs at a competitive disadvantage. At a minimum, the proposed rules should be revised so that they are not inconsistent with the stated purposes in § 1220-4-2-.02.

TDS also repeats for clarity and emphasis its previous comments that the proposed rules should not be adopted because no evidentiary record<sup>1</sup> has been developed to demonstrate that there are quality of service problems that need to be rectified. Speaking for itself, this is especially true of TDS. Without such a record, the proposed rules are simply a set of solutions in search of a problem. TDS certainly does not oppose the adoption of reasonable, minimum standards, applicable to all telecommunications carriers, adapted to today's current technology, such as § 1220-4-2-.16(2)(a) (requiring access lines providing voice grade basic service to be

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<sup>1</sup> The ARMIS data referenced by TRA staff throughout this proceeding does not include any network, financial or operational information from TDS or any other Tennessee small company.

capable of carrying data speeds effectively not less than 14.4 kilobits per second when requested by the customer). But the proposed rules are not limited to this appropriate scope, and are imposed in a context where no evidence supports the need for their adoption. Accordingly, the rules as promulgated should not be adopted.

### **SPECIFIC COMMENTS**

1. § 1220-4-2-.03(9) – Adequacy of Service Reports. This rule requires the carriers to report surveillance information on a local exchange level basis. TDS is currently reporting such information on a business office basis. Reporting on an exchange level basis requires more manual work, and there is no reason not to allow the companies the flexibility to report on a business office basis.
2. § 1220-4-2-.04 – Customer Refunds for Service Outages and Delayed Installation of New Local Service. The TRA should not adopt a rule that requires a per diem refund that approaches or exceeds the monthly rate for providing service. For example, this rule imposes a per diem “refund” of \$5.00, which when applied to a carrier such as Humphreys County Telephone Company has the potential to vastly exceed its monthly R-1 rate of \$5.25. This is punitive in the extreme. In addition, the TRA should not adopt -.04(2), which imposes a penalty on the carrier even when installation service dates are missed because of Acts of God or third party fault.
3. § 1220-4-2-.07 – Termination of Service to a Reseller by an Underlying Carrier or Cessation of Service by a Local Telecommunications Service Provider. At a minimum, -.07(2)(c) should contain the words “where available” to be consistent with -.07(1)(c).
4. § 1220-4-2-.09 – White Pages Directories. The carrier’s responsibility to include information about “all telecommunications service providers operating within the directory

service area” should be limited to such providers that either are designated as such by the TRA or specifically contact the publishing carrier to request inclusion. The publishing carrier may not always know which providers are operating in their areas, particularly since facilities-based CLECs can and do offer service in an area without contacting the ILEC for an interconnection agreement.

5. § 1220-4-2-.17(1)(a) – Scope of Quality of Service Mechanisms. At a minimum, the rule should require that QSMs will not go into effect unless there is a violation for three (3) consecutive months, especially since there must be compliance for three (3) consecutive months in order to cease the imposition of QSMs.

6. § 1220-4-2-.17(2)(b) – Installation of Primary Service Orders. To be consistent with -.17(2)(a), a credit should not be required if a customer has requested an installation date later than the minimum days for completion, and the provider has met that later installation date.

7. § 1220-4-2-.17(8) – Quality of Service Mechanisms (QSMs) for ETCs. The parties have repeatedly shown the difficulty of providing automatic credits for various events. To make failure to provide automatic credits constitute a separate violation of the rule is an example of how these rules are onerous, overreaching, and unfairly discriminatory against ETCs.

8. § 1220-4-2-.18(1)(a) – Lifeline and Link-up. Eligibility Requirements. TDS continues to believe that the entire topic of Lifeline and Link-up should not be included in minimum service standards. Nonetheless, requiring carriers to bear any responsibility for establishing that a customer seeking such assistance is “a U.S. citizen or is authorized by the federal government to be in the U.S.” is onerous and inappropriate in the extreme. Carriers should be able to rely on the fact that a customer qualifies for one of the seven (7) listed forms of government assistance as a sufficient basis for providing Lifeline or Link-up support.

9. § 1220-4-2-.18(7)(b) – Lifeline and Link-up, Educational Outreach Efforts. This rule inappropriately imposes on providers the duty of informing residential customers of the availability of these assistance programs at the time the customer requests installation of new local service. Such a requirement will either increase answer time beyond the 30 seconds required by § 1220-4-2-.16(o), or will require additional resources for compliance. As TDS believes inclusion of Lifeline and Link-up in minimum service standard rules is inappropriate, this particular rule is especially egregious in that it will impose additional unwarranted and uncompensated costs on TDS to comply with this rule and meet the requirement of a 30 second answer time.

10. § 1220-4-2-.19(1)(f) – Telephone Numbering Conservation. This rule requires any telecommunications service provider assigned telephone number resources by NANPA within Tennessee to return any and all unused or insufficiently used 1,000 number blocks as ordered by the TRA. TDS believes this rule is not appropriate for a set of rules governing minimum service standards. Nonetheless, TDS submits that the requirement, if adopted, should apply only to LNP-capable carriers, because it is part of 1000-block pooling which requires LNP-capability in order to be operable.

### CONCLUSION

TDS appreciates having this additional opportunity to comment on the latest draft of the proposed rules. The effort over the last two years to work through these rules in a careful and deliberate manner has been useful for the entire Industry. TDS appreciates the TRA Staff's willingness to utilize the workshop approach, consider the views of the Industry brought out during the discussion process, and the time and effort the Staff has put into this rule-making. Nevertheless, TDS continues to respectfully submit that the rules presently before the TRA are

not in the best interests of consumers or the Industry for the reasons set forth in the comments previously submitted by the Industry and TDS in addition to the present Brief. The rules should not be adopted without substantial revision in accordance with these comments, and, more importantly, the purposes of the rules: (1) minimum standards, (2) applicable to all telecommunications providers, (3) that strikes the appropriate balance with the pro-competitive policies adopted by the Tennessee General Assembly and the United States Congress.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Dale Grimes", with a long horizontal flourish extending to the right.

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*Attorneys for TDS TELECOM*

## CERTIFICATE OF SERVICE

I hereby certify a true and exact copy of the foregoing document has been served, via the method(s) indicated, on this the 17<sup>th</sup> day of May, 2002, on the following:

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